

## Proposed Amendments to Article 16. Presiding Officers

### **62. (Rule 62) Designation.**

When evidence is to be taken in a proceeding before the Commission, one or more of the Commissioners, or an Administrative Law Judge, may preside at the hearing.

### **63. (Rule 63) Authority.**

The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. The presiding officer He may take such other action as may be necessary and appropriate to the discharge of his or her duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission.

#### **63.1 (Rule 63.1) Petition for Reassignment - Exclusive Means to Request of Disqualification Reassignment of Administrative Law Judge.**

The provisions of this article are the exclusive means available to a party to a Commission proceeding to seek reassignment of that proceeding to another to disqualify an Administrative Law Judge from participating in deciding the issues or outcome of the proceeding.

#### **63.2 (Rule 63.2) Petitions for Automatic Reassignment.**

(a) A party to a proceeding preliminarily determined to be adjudicatory under Rule 6(a)(1) or 6(e), or determined to be adjudicatory under Rule 6(b)(1) or 6(d)(1), shall be entitled to petition, once only, for automatic reassignment of that proceeding to another Administrative Law Judge in accordance with the provisions of this subsection. The petition shall be filed and served in the proceeding where reassignment is sought, and on the Chief Administrative Law Judge and the President of the Commission. The petition shall be supported by declaration under penalty of perjury (or affidavit by an out-of-state person) in substantially the following form:

\_\_\_\_\_, [declares under penalty of perjury:] That [s]he is [a party] [attorney for a party] to the above-captioned adjudicatory proceeding. That [declarant] believes that [s]he cannot have a [fair] [expeditious] hearing before Administrative Law Judge [to whom the proceeding is assigned]. That declarant [or the party declarant represents]

has not filed, pursuant to Rule 63.2, any prior petition for automatic reassignment in the proceeding.

Dated \_\_\_\_\_, at \_\_\_\_\_, California.

\_\_\_\_\_  
[Signature]

Except as provided in Rules 63.3 and 63.4, no party in an adjudicatory proceeding will be permitted to make more than one petition for reassignment in the proceeding. In an adjudicatory proceeding where there is more than one complainant or similar party, or more than one defendant or similar party, only one petition for automatic reassignment for each side may be made.

Where the party seeking automatic reassignment is one of several parties aligned on the same side in the proceeding, the declaration shall include a showing that either (1) no previous petition for automatic reassignment has been filed in the proceeding, or (2) the interests of the petitioner are substantially adverse to those of any prior petitioner for automatic reassignment in the proceeding.

(b) A party to a proceeding preliminarily determined to be ratesetting under Rule 6(a)(1), 6(c)(2), or 6(d), or determined to be ratesetting under Rule 6(b)(1) or 6(c)(1), or a person or entity declaring the intention in good faith to become a party to such proceeding, shall be entitled to petition, once only, for automatic reassignment of that proceeding to another Administrative Law Judge in accordance with the provisions of this subsection; however, no more than two reassignments pursuant to this subsection shall be permitted in the same proceeding. The petition shall be filed and served as provided in subsection (a) of this rule, and shall be supported by a declaration similar in form and substance to that set forth in subsection (a) of this rule.

Whenever a timely petition for automatic reassignment of a ratesetting proceeding is filed, the Chief Administrative Law Judge, promptly at the end of the 10-day period specified in subsection (c) of this rule, shall issue a ruling reassigning the proceeding. A party to the proceeding, or a person or entity declaring the intention in good faith to become a party to the proceeding, may petition for another automatic reassignment no later than 10 days following the date of such ruling. The petition shall be filed and served as provided in subsection (a) of this rule, and shall be supported by a declaration similar in form and substance to that set forth in subsection (a). The second automatic reassignment of the proceeding shall not be subject to further petitions pursuant to this subsection.

(c) Any petition and supporting declaration filed pursuant to subsections (a) or (b) of this rule shall be filed no later than 10 days after the date of the notice of the assignment or reassignment, except that a second petition for automatic reassignment of a ratesetting proceeding shall be filed no later than 10 days following the date of the ruling on the first petition for automatic reassignment filed pursuant to subsection (b).

(d) Upon the filing of a petition for automatic reassignment, the Chief Administrative Law Judge, subject only to the restrictions in this rule on the number and timeliness of petitions in a given proceeding, shall issue a ruling reassigning the proceeding to another Administrative Law Judge. The Chief Administrative Law Judge, in consultation with the President of the Commission, shall issue a ruling explaining the basis for denial whenever a petition for automatic reassignment is denied.

### **63.3 (Rule 63.3) Petitions for Reassignment - Unlimited Peremptory.**

(a) Irrespective of the limits in Rule 63.2 on number of petitions for automatic reassignment, any party is entitled to file a petition for reassignment in any adjudicatory proceeding or ratesetting proceeding in which the then-assigned Administrative Law Judge (1) has served within the previous 12 months in any capacity in an advocacy position at the Commission or has been employed by a regulated public utility, (2) has served in a representative capacity in the proceeding, or (3) has been a party to the proceeding. A petition under this subsection shall be supported by declaration under penalty of perjury (or affidavit by an out-of-state person) setting forth the factual basis for the petition, and shall be filed and served as provided in Rule 63.2(a).

(b) Any petition and supporting declaration filed pursuant to this rule shall be filed no later than 10 days after the date of the notice of the assignment or reassignment. The Chief Administrative Law Judge, in consultation with the President of the Commission, shall issue a ruling explaining the basis for denial whenever a petition for reassignment made pursuant to this rule is denied.

### **63.24 (Rule 63.24) Grounds for Disqualification-Petitions for Reassignment - Cause.**

~~(a) An Administrative Law Judge shall be disqualified if:~~

- ~~(1) The Administrative Law Judge, or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the Administrative Law Judge's knowledge likely to be a material witness in the proceeding.~~
- ~~(2) The Administrative Law Judge has, within the past two years, (A) served as a representative in the proceeding, or (B) in any other proceeding involving the same issues, served as a representative for, or given advice to, any party in the present proceeding upon any matter involved in the proceeding.~~

(a) Any party is entitled to file a petition for reassignment in any adjudicatory, ratesetting, or quasi-legislative proceeding where:

(31) The Administrative Law Judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding. An Administrative Law Judge shall be deemed to have a financial interest if:

(A) A spouse or minor child living in the Administrative Law Judge's household has a financial interest; or

(B) The Administrative Law Judge or his or her spouse is a fiduciary who has a financial interest.

An Administrative Law Judge has a duty to make reasonable efforts to be informed about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of the children living in the household.

~~(4) The Administrative Law Judge is a member of a party or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or a trustee of a party.~~

~~(5) A representative or a spouse of a representative in the proceeding is the spouse, former spouse, child, sibling, or parent of the Administrative Law Judge or his or her spouse, or if such a person is professionally associated with a representative in the proceeding.~~

~~(6) For any reason (A) the Administrative Law Judge believes his or her recusal would further the interests of justice, (B) the Administrative Law Judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the Administrative Law Judge would be able to be impartial. Bias or prejudice towards a lawyer in the proceeding may be grounds for disqualification.~~

(2) The Administrative Law Judge has bias, prejudice, or interest in the proceeding.

(b) A petition filed pursuant to this rule shall be supported by a declaration under penalty of perjury (or affidavit by an out-of-state person) setting forth the factual basis for the petition, and shall be filed and served as provided in Rule 63.2(a).

(c) A petition and supporting declaration filed pursuant to this rule shall be filed at the earliest practicable opportunity and in any event no later than 10 days after the date the petitioner discovered or should have discovered facts set forth in the declaration filed pursuant to this rule. The Chief Administrative Law Judge, in consultation with the President of the Commission, and after considering any response from the assigned Administrative Law Judge, shall issue a ruling addressing a petition for reassignment filed pursuant to this rule.

(ed) A party may file no more than one ~~motion to disqualify~~ petition for reassignment of an Administrative Law Judge pursuant to this rule unless facts suggesting new grounds for ~~disqualification-reassignment~~ are first learned of or arise after the ~~motion~~ petition was filed. Repetitive ~~petitions for reassignment~~ motions to disqualify not alleging facts suggesting new grounds for ~~disqualification-reassignment~~ shall be denied by either the Chief Administrative Law Judge or by the Administrative Law Judge against whom they are filed.

(Note: Rule 63.4 (d) is a revised version of former Rule 63.4(e))

**63.35 (Rule 63.35) Circumstances Not Constituting Grounds for ~~Disqualification~~ Reassignment for Cause.**

It shall not be grounds for ~~disqualification-reassignment for cause~~ that the Administrative Law Judge:

(a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group.

(b) Has experience, technical competence, or specialized knowledge of or has in any capacity expressed a view on a legal, factual or policy issue presented in the proceeding, except as provided in Rule 63.2(a)(2)3.

(c) Has, as a representative or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding unless the Administrative Law Judge believes that ~~his or her the~~ prior involvement was such as to prevent the Administrative Law Judge from exercising unbiased and impartial judgment in the proceeding, so well known as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.

**63.46 (Rule 63.46) Procedure for Disqualification of Administrative Law Judge's Ability to Request Reassignment.**

(a) The Administrative Law Judge shall ~~disqualify himself or herself~~ request reassignment and withdraw from a proceeding in which there are grounds for ~~disqualification-reassignment for cause~~ unless the parties waive the ~~disqualification reassignment~~ pursuant to Rule 63.57.

(b) ~~A party may request disqualification of an Administrative Law Judge by filing a motion to disqualify with a verified supporting written statement, which shall state with particularity the grounds for the disqualification. The motion shall be presented at the earliest practicable opportunity, and in any event within 15 days of discovery of the facts constituting the ground for disqualification. Copies of the motion shall be served on the~~

~~Administrative Law Judge sought to be disqualified, as well as on all parties to the proceeding.~~

~~(1) Upon receipt of a motion to disqualify, an Administrative Law Judge shall promptly notify the Chief Administrative Law Judge who shall rule on the motion to disqualify. A party may appeal the ruling of the Chief Administrative Law Judge by filing an appeal. The appeal shall be filed within 10 days of the Chief Administrative Law Judge's ruling. Other parties and the challenged Administrative Law Judge may file a response to the appeal within 10 days of the filing of the appeal. The appeal shall be decided by the full Commission.~~

~~(2) Within 15 days of the filing of a motion to disqualify, the Administrative Law Judge may file a verified response admitting or denying any or all of the allegations contained in the motion and setting forth any additional facts material or relevant to the question of disqualification. The Process Office shall serve a copy of the Administrative Law Judge's response on all parties to the proceeding. An Administrative Law Judge who fails to file a response within the time allowed shall be deemed to have consented to his or her disqualification.~~

~~(c) In complaint proceedings, a party may file a written motion to disqualify, with a verified written declaration that the Administrative Law Judge to whom the matter is assigned is prejudiced against such party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial hearing before the Administrative Law Judge.~~

~~(1) The motion shall be filed within 10 days after notice of assignment is issued.~~

~~(2) If the motion is duly presented and the supporting statement is duly verified, thereupon and without any further act or proof, the Chief Administrative Law Judge shall assign some other Administrative Law Judge to hear the matter.~~

~~(3) Under no circumstances shall any one party be permitted to make more than one such motion in any case, and in cases where there may be more than one complainant or similar party or more than one defendant or similar party, only one such motion for each side may be made in any one case.~~

**(Note: Former Rule 63.4(d) and (e) are revised and appear in the new rules as Rule 63.4(d) and Rule 63.8, respectively)**

### **63.57 (Rule 63.57) Waiver.**

An Administrative Law Judge, after determining that there is basis for his or her reassignment for cause, shall who determines himself or herself to be disqualified after disclosing the basis for his or her disqualification on the record, and may ask the parties whether they wish to waive the disqualification reassignment. A waiver of disqualification reassignment shall recite the basis for disqualification reassignment and is shall be effective only when signed by all parties, and included in the record. The Administrative Law Judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers representatives or parties favored or opposed a waiver of disqualification reassignment.

### **63.8 (Rule 63.8) Prior Rulings.**

(d) If an Administrative Law Judge is disqualified reassigned, the rulings he or she has made up to that time shall not be set aside in the absence of good cause.

(Note: Rule 63.8 is a revised version of former Rule 63.4(d))

### **63.69 (Rule 63.69) Ban on Ex Parte Communications.**

Ex parte communications regarding the assignment, or reassignment of disqualification of particular Administrative Law Judges are prohibited.

### **63.710 (Rule 63.710) Definitions.**

For the purposes of Rules 63.1 to 63.69 inclusive, the following definitions apply:

(a) "Financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities held by the organization unless the Administrative Law Judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(b) "Representative" includes any person authorized to represent a party to a proceeding, whether or not the person is licensed to practice law, or an expert witness or consultant for the party.

~~(c) The third degree of relationship shall be calculated according to the civil law system.~~

~~(c) "Proceeding" means an application, complaint, investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored by the Commission, or other formal proceeding before the Commission.~~

(ec) "Fiduciary" includes any executor, trustee, guardian, or administrator.

(fd) "Ex parte communication" ~~is~~ includes all communications defined as ex parte communications elsewhere in these rules and, in addition, a communication ~~as defined in Rule 1.1(g), except that when a motion seeking to disqualify an Administrative Law Judge has been filed, it shall also include communications~~ between ~~the an~~ Administrative Law Judge ~~so-challenged~~ and other decisionmakers about a petition for reassignment of a proceeding to which the Administrative Law Judge is currently assigned.